

**PLANNING BOARD
TOWN OF MARILLA**

Date: March 17, 2005

Present: Debbie Zimmerman, Chairman Barbara Spanitz, Town Board
Nathan Barnard, Co-Chairman Robert Miller, Consult
Dan Handy
Judy Gillman
Paul Domanowski
Tom Wantuck

Absent: Rich Janiga, John Fronczek, CEO

Guests: John Foss, Supervisor, James G. Hopper, Gary Henke, David Dare, Terry Dare, Donald Menge, Carol Menge, Edward Riedel, Sharon Foersch, Gary Foersch, Dan Gerhardt, Evan Gerhardt, Leonard Janiga, Warren Handley, Carolyn Hurley

- I. Debbie Zimmerman, Chairman, opened the Planning Board meeting at 7:05p.m. All in favor – 6 ayes.
- II. **MOTION** to accept February minutes by Dan Handy, seconded by Paul Domanowski.
- III. New Business
 - a. John Foss, Supervisor, spoke to the Planning Board regarding flag lots clarifying that two flag lots are allowed on a driveway and the Town Board does not have a problem with flag lots but would like the rules governing flag lots and subdivisions to be enforced. A moratorium is placed on flag lots until we create a Local Law. (Subdivision under A): Current zoning now is interpreted as two building permits for homes every five years on any deed as of 1996. If you want to create more than two lots in less than five years it would be under subdivision regulations. Flag lots are considered to be part of the law stating two every five years. This is enforced with building permits. There is a problem with owners who sell or split property and do not record. The ordinances are being redone by the end of the year.
 - b. Dan and Evan Gerhardt appeared before the Planning Board regarding a Special Use Permit requesting a horse facility which was previously submitted at the February 17 meeting. Chairman Debbie Zimmerman went over the Checklist for Application for Site Development Plan Approval. Bob Miller reminded them of restrictions not to disturb federal

wetlands shown on our map. **MOTION** to approve by Nathan Barnard contingent upon submittal of survey to CEO John Fronczek, seconded by Daniel Handy. All in favor – roll call vote – Tom, Dan, Paul, Judy, Nathan, Debbie – 6 ayes. It now goes to the Town Board on April 14, 2005 at 7:30 p.m. for final approval.

- c. Walter Schmidt appeared before the PB for a flag lot on Bullis Road. He talked to CEO John Fronczek and filled out papers, which were handed out, along with a copy from the Army Corp of Engineers. Mr. Schmidt put in two driveways during the winter time with the intent of building two lots and two larger lots behind which would be considered four lots. Mr. Schmidt would only be able to get two building lots. Four or more lots for immediate, future sale, or transfer would be classified as subdivision and should go through the subdivision review process. This is also an agricultural district. Chairman Debbie Zimmerman read aloud a letter addressed to Mr. Schmidt from the CAB stating they cannot proceed with Mr. Schmidt's request because he has not met the requirements as indicated in Marilla Town Code Book page 21091 which requires proof of ownership. Bob Miller explained this is the Checklist for Application which is obtained from CEO John Fronczek. Mr. Schmidt needs to amend his application with John Fronczek and be put on the Planning Board agenda for next month's meeting.

IV. Open Presentations from the Floor

Terry Dare of 1506 Greenwood Terrace asked where in the ordinance it says acreage can be split into the house plus two lots.

Dan Handy explained a property owner could create two new lots over and above the original lot within a five year period without the action being considered.

Terry Dare stated that there is a house on the property and it can be split so that there is now a house plus two additional lots. Mrs. Dare said she and the other residents live on Greenwood Terrace where Mr. Schmidt has purchased the land behind them. She said Mr. Schmidt has told her he is going to divide it into a subdivision of 8 parcels and is going to divide it into two lots without board approval based on deeds of the property. The residents are concerned because he has already begun by building two driveways and has started building another driveway off of Townline through which might be wetlands or considered in a conservation overland district. The residents are concerned that the road is going in, there are offers in the paper to sell this land in as many as 8 parcels which sounds like a subdivision, and what will happen with the water district?

David Dare of 1506 Greenwood Terrace is worried about the drainage.

The Planning Board cannot do anything about a person clearing their land. The DEC would have to be contacted regarding the creek.

Terry Dare asked about how you find out if something is considered in the conservation overlay district. Bob Miller responded by looking at a composite of many different mappings regarding environmental issues. Tom Wantuck feels according to the wetlands map that it is not state or federal wetlands. The DEC would regulate building in a flood plain.

Gary Henke of 1522 Greenwood Terrace feels Mr. Schmidt is a businessman and wants to do what he wants to do but feels the people who have lived on the street for so long should get some sort of relief if Mr. Schmidt is permitted to do what he wants to. He hopes the Planning Board would take into consideration a "buffer zone."

Dan Handy stated that as the flag lot law now stands the CAB and PB would not be able to give approval as this is prime farmland.

Ed Riedel of 1602 Greenwood Terrace feels that as the land is prime farmland that no residential development can occur on that land.

Dan Handy responded correct as the law now stands. Bob Miller feels Mr. Schmidt's proposal is considered a subdivision which are only allowed in rural residential areas. If rezoning did occur a public hearing would be held.

The Planning Board needs to define "prime farmland" more clearly.

Nathan Barnard explained the use of flag lots. The intent was to use up land which was not prime farmland. It is being abused and that is why there is a moratorium on the flag lots to be revised.

Ed Riedel asked if the Planning Board ever gets involved in impact studies to find out if at what point do we say no more residential building because there will be a drain of resources and increase taxation such as Lancaster, Williamsville, etc.

Warren Handley stated we cannot stop building and our town only had twelve new builds last year. Bob Miller responded that in the town's comprehensive plan there are recommendations to maintain the rural character of the town. New York State Town Law requires that zoning be based on your comprehensive plan.

Warren Handley questioned the split on Three Rod Road as it counts as one split and then he can do two more. Mr. Schmidt would have to wait

two more years before he can do three. Warren Handley wanted to clarify when Mr. Schmidt came before the CAB they felt he did not have enough information and would be notified by mail of their decision. Mr. Schmidt did not show the CAB the detailed map. The CAB meeting was cancelled and rescheduled for the next evening to respond to Mr. Schmidt. This was considered an illegal meeting, however, nothing was voted on.

Leonard Janiga of 11121 Jamison Road stated that in the Code Book under CAB they can make up their own rules for their meetings and are not held under these rules.

Gary Foersch of 1567 Greenwood Terrace asked how long is the duration of the moratorium.

Chairman Debbie Zimmerman stated six months. Debbie Zimmerman thanked everyone for attending and feels it is important for people to let us know how they feel. It is appreciated. The Town Board meetings are another great way to get information and stay connected to the town and are always welcome at our meetings also. Our meetings are on the third Thursday of each month at 7:00 p.m. Terry Dare asked each member to identify themselves which they did.

Dan Handy stated we will be working on the flag lot law and if anyone has any ideas please let us know. Nathan Barnard stated that Marilla is noted as one of the leading places in preserving farmland and we started the Right to Farm Law.

Bob Miller handed out some information regarding flag lots and interprets it as if there are more than three lots it is considered a subdivision. Bob Miller feels John Fronczek should hand out Checklist for Application and when the people come before the PB they need all their information and if not it will be rejected. This form may also be used for Special Use Permits and flag lots.

Judy Gillman asked if the PB should meet an additional night due to the flag lots. Nathan Barnard stated we probably should. Debbie Zimmerman stated to go over all the information Bob Miller handed out and then we will decide.

Dan Handy stated to remember people who own the land do have rights and we need to be careful of that.

V. CEO Report: None.

VI. Town Board Report: None.

VII. **MOTION** to adjourn at 9:30 p.m. Judy moved, seconded by Paul, and all in favor 6/0.

Respectfully submitted,

Laura Nuttle, Clerk